

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
(Kailua-Kona, Island of Hawaii, Hawaii)

ASTON KEAUHOU BEACH RESORT 1/

Employer

and

HOTEL EMPLOYEES & RESTAURANT EMPLOYEES,
LOCAL 5, AFL-CIO 2/

Petitioner

37-RC-3895

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 3/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 4/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 5/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 6/

All full-time and regular part-time employees employed by the Employer at its Kailua-Kona, Hawaii, facility; excluding guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll

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period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Hotel Employees & Restaurant Employees, Local 5, AFL-CIO**.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Subregion 37 Office, 300 Ala Moana Boulevard, Room 7-245, Post Office Box 50208, Honolulu, Hawaii, on or before June 16, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by **June 23, 1999**.

Dated June 9, 1999

at San Francisco, California

/s/ Alan B. Reichard
Acting Regional Director, Region 20

- 1/ The Employer's name is in accord with the stipulation of the parties.
- 2/ The Petitioner's name is in accord with the stipulation of the parties.
- 3/ The parties stipulated, and I find, that the Employer is authorized to do business in the State of Hawaii and operates a facility located at 78-6740 Alii Drive, Kailua-Kona, on the Island of Hawaii, Hawaii where it is engaged in the management of a hotel providing lodging. During the 12-month period ending April 30, 1999, the Employer derived gross revenues in excess of \$500,000 and purchased and received goods and supplies valued in excess of \$5,000 directly from suppliers located outside the State of Hawaii. Based on the parties' stipulation to such facts, it is concluded that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes and policies of the Act to assert jurisdiction in this case.
- 4/ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
- 5/ The parties stipulated, and I find, that there is no collective bargaining agreement covering any of the employees in the petitioned-for unit.
- 6/ At the hearing, the Petitioner amended the petition to seek a unit comprised of all full-time and regular part-time employees employed by the Employer at its Kailua-Kona, Hawaii, facility; excluding security employees and/or guards and supervisors as defined in the Act. The Employer does not contend that the petitioned-for unit, as amended, is inappropriate for collective bargaining purposes. Rather, the Employer asserts that inasmuch as it contracts the landscaping, laundry, food and beverage, and security/guard services at its facility to other companies and the Petitioner does not seek to represent employees employed by these entities, these classifications of employees should be specifically listed in the unit description as excluded from the unit. The Petitioner asserts that inasmuch as it seeks only to represent employees employed by the Employer, the unit, as described in the amended petition, is an appropriate unit.

The record reveals that the Employer manages a 311-room, 10-acre resort on the Island of Hawaii. It employs approximately 55 employees at this facility including approximately 7 front desk employees, 9 bell attendants, 2 reservationists, 38 housekeepers and 7 engineers. The housekeeping department, engineering department, front desk department (covering front desk and bell attendants) and reservations department are each separately supervised. The Employer makes the same fringe benefits package available to all of its employees. All of the employees wear uniforms that differ among the various departments.

The record further reveals that the Employer contracts its landscaping, laundry, food and beverage, and security/guard services respectively, to South Pacific Landscaping, Hawaii Linen, Sam Choy's Hawaii, and Hawaii Protective Association. These

entities are separate companies from the Employer and the Petitioner asserts that it does not seek to include persons employed by these entities in the unit. In these circumstances, the landscaping employees, laundry employees, food and beverage employees, and security/guard employees will be excluded from the unit.

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